1948. **File No.** O/S/CTCM/48

Legal Deptt.

G **BRANCH**

Subject:— Opinion on Sanction under Cotton Textiles (Control of Movement) Order 1946 & Cotton Textiles (Control) Order 1948

P-6/E

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Gen. 194 e.

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C O N T E N T S.

Legal Department File No. C./6/C.T.C.M. /48.

Sr.No.	L.I./C.No.	Subject	Pages.
		Opinions on sanction under Cotton Textiles (Control of Movement) Order, 1946, and Cotton Textiles (Control) Order, 1948.	
1.	7/643 5-11-1948	Whether sanction is necessary in cases in which charge sheets would be submitted to Magistrate in respect of offences which were committed before clause xx 10 of 1946 order was repealed.	1-10

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Office of the R.L.A.

Clause 10 of the Cotton Textiles (Control of Movement) Order, 1946, provided that no prosecution for the contravention of any of p the provisions of this Order shall be instituted except with the previous sanctions of the Central or the Provincial Government or an officer authorized in that behalf by the Central or ~~xxxx

of 1945. Imperator v. Radhakrishna Sagarmal and Biharilal Cakarmal. (Relevant extract attached)). The bar created by clause 10 was procedural and would come into play only at the stage when the prosecution is instituted in this sense, irrespective of the fact whether the offence was committed prior to the removal of the bar. The accused cannot claim the privilege of a prior sanction in respect of any institution of prosecution to be made hereafter, since the bar of sanction is no longer an impediment in the way of such institution. In my opinion, therefore, no sanction is necessary for prosecutions which may be launched hereafter in respect of contraventions of the Cotton Textiles (Control of Movement) Order, 1946. Compare Gafoor Dawood in re. 26 Bombay Law Reporter, p. 1235; and R.L.A.'s opinion No. 7257 dated 2-8-1948.

4/ Such contraventions are punishable under section 7 of the Essential Supplies (Temporary Powers) Act, 1946, and although the order may have been repealed and replaced by another Order, the contraventions will continue to be so punished. If the above view be correct, after the deletion of clause 10 of the repealed Order, no sanction was necessary, and the fact that the order has been ~~xx~~ repealed would not make any difference. The view that sanction is no longer necessary would get further support from the fact that the provision regarding sanction has been omitted from the text of the new order.

5. The position in respect of sanctions under the Cotton Cloth and Yarn (Control) Order, 1945, is slightly different. Clause 23 of that

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Order provided in almost identical terms that no prosecution for the contravention of any of the provisions of this Order shall be instituted without the previous sanction of the Provincial Government or of such officer of the Provincial Government considered by them to be not below the rank of District Magistrate as the Provincial Government may by general or special order in writing authorise in this behalf. This Order was repealed and replaced by the Cotton Textiles (Control) Order, 1948, issued on the 19th of February 1948, and clause 39 of that Order reprodices the former clause 23. This Order in turn was repaled and replaced by the Cotton Textiles (Control) Order, 1948, issued on the 2nd August 1948, and clause 36 of that Order reproduces the same provisions regarding sanction. This clause, namely, clause 36 was deleted by Notification in the Department of Industries & Supply No. 80-Tex.-1/48 dated 10th August 1948.

6. The cases now awaiting sanction are mostly in respect of offences committed before the 19th of February 1948 when the Cotton Textiles (Control) Order, 1948, came into force. There may arise cases of offences committed between the 19th of February 1948 and the 2nd of August 1948. The saving clause in both these Orders reads as follows:-

> "The Order.....
> is hereby repealed:
> xxx
> Provided that any order made, notification issued, right accrued, penalty incurred, or anything done or deemed to have been done under the said Order shall be deemed to have been made, issued, accrued, incurred or done under the corresponding provisions of this Order."

This formula is different from the well-known formula used in section 6 of the General Clauses Act, 1897 ~~and what~~

Act, 1697, and what is more interesting is that in the Cotton Textiles (Control of Movement) Order, 1948, an altogether different formula is used. As stated above, even after the Order of 1945 was repealed, contravention of the provisions of that Order would continue to be punishable under section 7 of the Essential supplies (Temporary Powers) Act, 1946. The sanction clause in the substituted orders speaks of prosecutions for the contravention of any of the provisions of that Order (Compare clauses 39 and 36, respectively, of the two Orders). The saving clause in the substituted Orders does not say , nor is there anything in the Order to show, that the contravention of the provisions of the repealed Order was to be deemed to be a contravention of the corresponding provisions of the substituted Order. It would, therefore, seem that sanction would have to be given not under the appropriate clause of the substituted Order but under the appropriate clause of the repealed Order. Although the Order may have been repealed, since we are prosecuting the offender for contravention of its provisions under section 7 of the Essential Supplies (Temporary Powers) Act, we cannot deprive him of the procedural protection given to him by the sanction clause in that Order. Following that view, it has been the practice of this Department to give sanction under clause 23 of the Cotton Cloth and Yarn (Control) Order, 1945, for offences committed prior to the 19th of February 1948. If that view be correct, the fact that the sanction clause in the latest order has been deleted would not affect the necessity of sanction under the repealed Order. This That is the point of distinction

between this group of cases and the group of cases under the Cotton Textiles (Control of Movement) Order, 1946. The reasoning about the former group of cases would apply to prosecutions in respect of offences committed after the Cotton Textiles (Control) Order, 1948, dated 2nd August 1948 came into force.

7. All the files relating to sanction orders under the Cotton Textiles (Control of Movement) Order, 1946, referred to the H.L.A. are therefore returned herewith.

The files relating to sanction orders under the Cotton Cloth and Yarn Control Order, 1945, and the Cotton Textiles (Control) Order, 1948, of 19th February 1948 are being dealt with and will be returned to C.S.D. duly examined as early as possible.

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O.C.

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. C/683, dated the 5th November 1948.

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